STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-585

November 20, 1997

PUBLIC UTILITIES COMMISSION
Utility Employee Transition
Services and Benefits

NOTICE OF INQUIRY

WELCH, Chairman; NUGENT AND HUNT, Commissioners

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## I. INTRODUCTION

In this Notice, we initiate an inquiry into the appropriate rules and procedures for investor-owned utilities' provision of transition services and benefits for employees laid off as a result of the Legislature's restructuring of the electric industry in Maine. We request comments from interested persons on the questions posed in this Notice and any additional issues that interested persons believe should be addressed in this proceeding. After the Commission has had an opportunity to review the comments submitted pursuant to this Notice, we will initiate a formal rulemaking docket.

## II. BACKGROUND

The Maine Legislature has decided that all Maine electricity customers will have the right to purchase generation service from competitive providers by March 1, 2000.[1] Each current investor-owned utility must divest its generation assets by that time. The changes in the industry and the divestitures of generation assets may cause current investor-owned utility employees to lose their jobs. The Legislature anticipated potential work force reductions and included in the Act a provision which requires investor-owned utilities to develop a program to: (1) assist affected employees in maintaining fringe benefits and obtaining employment that makes use of their potential; (2) provide employees with retraining services and out placement services and benefits for 2 years after the beginning of retail access; (3) provide full tuition for 2 years at the University of Maine or a vocational or technical school in the State, or equivalent retraining services; (4) provide continued, equivalent health care insurance for 2 years or until permanent replacement coverage is obtained through reemployment; and (5) provide severance pay equal to 2 weeks of base pay for each year of full-time employment. 35-A M.R.S.A. § 3216.

The Commission has been charged with adopting rules to implement the statutory requirements. In addition, the Commission must set certain deadlines relating to eligibility for benefits and allocate the "reasonable accrual increment cost" of the services and benefits to ratepayers through charges collected by the transmission and distribution utility. See 35-A M.R.S.A. § 3216.

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[1] "An Act to Restructure the State's Electric Industry." P.L. 1997, Ch. 316 (Act).

Initially, it appears that the Legislature contemplated that the Commission would have limited involvement with the employee benefit plans. Specifically, section 3216 does not provide a review procedure, standard of review, or approval requirement with respect to the utilities' filing of benefit plans. Further, the statute appears to specify all of the necessary components for the transition benefits plans. In addition, the rule is designated as technical, rather than substantive. Finally, the Commission's expertise clearly lies in economic regulation and not regulation of labor relations.

The Commission also recognizes that it must ensure that the spirit and intent of the statute is met. Specifically, while the statute provides no express review mechanism, it is clear that the Legislature contemplated some level of review by the Commission or else it would not have required the utilities to file the plans with the Commission. If the Commission is required to review the plans, it must have some general standard by which it may evaluate whether the plans meet the statute's minimum requirements. Further, while the statute does not appear to contemplate extensive individual litigation of the plans (either by the utilities or individual employees), the Commission may need to provide a forum for interested parties to comment upon the compliance of each utility's plan when it is filed with the Commission.

To balance the Commission's roles in implementing the statute, the Commission believes that it would be best to establish "bright line" criteria and standards rather than more ambiguous standards that would require individual adjudication. Thus, the questions listed in the sections below are designed to elicit assistance in setting the "bright line" standards which will assist the Commission and the utilities in effectuating the Legislature's intent. The Commission invites interested persons to submit comments on any and all of the issues discussed below.

## III. QUESTIONS AND ISSUES FOR COMMENTERS

### A. Dates of Eligibility

Section 3216(1)(A) provides that, absent just cause, all layoffs that occur after March 1, 2000, will be "deemed" to have been "due to" retail competition. Thus, employees laid off after March 1, 2000, are automatically eligible for benefits. Section 3216(1)(A) then requires the Commission to set a cutoff date for the automatic eligibility. Our tentative view is that 2 years would provide sufficient time for utilities to adjust their work forces, and thus a cutoff date of March 1, 2002, would be reasonable. We request comments on this date and rationales for any alternative time periods.

With regard to employees laid off before March 1, 2000, it would appear that the statute contemplates that employees terminated between January 1, 1998, and March 1, 2000, are eligible for benefits if the layoff is "due to" retail competition as defined in section 3216(1)(B). However, it is not clear how soon after a retail competition event (i.e., retail access or the sale or merger of any generation asset prior to March 1, 2000) a layoff must occur in order for it to be considered "due to" retail competition. In addition, section 3216 does not address the eligibility of an employee who was originally employed by the investor-owned utility, became an employee of the new owners of the divested generating facilities, and then was laid off as a result of subsequent work force reductions by the new owners during the transition period.

Given the proposed 2-year automatic eligibility period, the Commission's desire to provide "bright line" standards, and the Legislature's goal of protecting employees laid off due to electric restructuring, a 2-year eligibility period for layoffs made by either the investor-owned utility or the new owner of the generating facilities that occur after January 1, 1998, appears to be fair and reasonable. Thus, any employee who is laid off between January 1, 1998, and March 1, 2000, and within 2 years of a retail competition event would be eligible for transition benefits, regardless of whether the investor-owned utility or the new owners of the generation facilities ordered the layoffs. We invite comments on this proposed "bright line" standard.

Finally, the statute does not expressly contemplate early divestiture by a utility. Specifically, the statute does not appear to limit the period of eligibility for employees of utilities that divest prior to March 1, 2000. It seems unreasonable to presume that the Legislature intended to require a utility to provide transition benefits for an extended period if it happened to divest prior to March 1, 2000. Given the

2-year window of eligibility proposed above, it appears reasonable to limit the eligibility of employees of utilities that divest early to a period of 2 years after divestiture. Thus, a utility divesting on March 31, 1998, would only be required to provide benefits through March 31, 2000. Layoffs by that utility which occurred after March 31, 2000, would not be subject to the automatic eligibility provisions of section 3216(1)(A) under the just cause exception to automatic eligibility. 35-A M.R.S.A. § 3216(A).

By way of illustrating the Commission's proposed deadlines, an employee of a utility which divested on January 1, 1999, would be eligible for benefits if either the utility or the new owner of the generating facilities laid the employee off prior to January 1, 2001. If the layoff occurred subsequent to this date, the employee would not be eligible. On the other hand, if the utility did not divest until March 1, 2000, the employee would be eligible if he/she was laid off prior to March 1, 2002.

1. Is a 2-year period sufficient time for a utility to adjust its work force following divestiture? If not, what specific period of time should be provided?

2. Should the Commission limit employee eligibility for transition benefits for utilities divesting prior to March 1, 2000, to a 2-year period following divestiture? If not, to what time period should eligibility be limited? Why?

3. Should the Commission rule presume that all layoffs which are not due to just cause, and which occur within 2 years of the sale or merger of a generation asset, are "due to" retail competition? If not, what other time limits should be set? What other "bright line" standard could be used to determine whether a pre-2000 layoff is "due to" retail competition?

4. Should an employee who was originally employed by the investor-owned utility, became an employee of the new owners of the divested generating facilities, and then was laid off as a result of subsequent downsizing by the new owners, be eligible for benefits? If yes, why? If not, why not?

5. If the employee described in question 4 above should be eligible, how would the Commission

implement such a requirement? Should the new owners be required to commit to providing the same level of benefits contained in the investor-owned utility's plan as a condition of Commission approval of divestiture? What jurisdiction, if any, does the Commission have over the new owners of the generating facilities? Should the investor-owned utility be responsible for ensuring that the new owners provide the necessary benefits? Would the new owner provide its own benefits or the benefits provided by the original investor-owned utility?

B. Scope of Benefits

The programs/benefits listed in sections 3216(2)(B-E) appear to be the "transition benefits" intended by the Legislature. The Commission sees no need to add to the list or otherwise limit eligibility. However, there are several terms used in section 3216(2) that appear to require further definition. The Commission seeks comment on whether it should define terms that are outside its traditional area of expertise and, if so, how the terms should be defined.

On a related note, the Commission currently believes that its role in reviewing the plans submitted by the utilities should be minimal. Thus, the Commission believes that it should not conduct an in-depth substantive review of the plan unless a party or interested person petitions the Commission for an investigation on the grounds that the plan violates the Act or the Commission, on its own motion, initiates an investigation on the same grounds. The Commission seeks comment on this approach.

1. Are the programs/benefits listed in sections 3216 (2)(B-E) the complete set of benefits intended by the Legislature?

2. Should the Commission define the terms found in section 3612(2), i.e., define "health benefits," "fringe benefits," "assist," and "potential"? Or, should such definitions be left up to the individual utilities?

3. If the Commission should define the terms found in section 3612(2), how should the terms "health benefits," "fringe benefits," "assist," and "potential" be defined? Do any industry-wide definitions exist for these terms? If so, please supply them.

4. To what extent should the Commission review the plans filed by the utilities? Should parties or interested persons in the utility's divestiture proceeding be given an opportunity to comment upon the plan after it is filed?

5. Should the Commission have any role in the ongoing oversight of the utility's compliance with the terms of the plan? If so, how would this be accomplished?

C. Employees' Ability to Decline Comparable Work in Favor of Transition Benefits

The statute does not address the issue of an employee's declination of comparable employment in order to take advantage of benefits and services offered under a plan. While certain employees may attempt to take advantage of the system, the costs and difficulties of making individual determinations of comparability would appear to outweigh the benefits of a "bright line" policy of not investigating comparability of employment unless an individual utility petitions for relief due to exceptional circumstances.

1. Should the Commission litigate comparability on an individual case basis? If not, what other forums or procedures should be used?

D. Filing of Transition Benefits Plans Prior to March 1, 2000

Section 3216(3) requires a utility to file its transition benefits plan either prior to finalizing any transaction that would result in an eligible employee being laid off or 90 days before retail access occurs (December 1, 1999). Thus, the Legislature clearly contemplated that all investor-owned utilities would eventually be required to file a plan and that the plan should be tied to finalizing divestiture transactions. In the interests of promoting "bright line" standards, it would appear appropriate to require a utility to file its plan at the same time that it files for final Commission approval of the sale of its assets (if earlier than the statutory requirement). This procedure will allow both the Commission and other interested persons an opportunity to review the plan as well as file comments regarding the plan's compliance with section 3216 prior to Commission approval of the divestiture.

Indeed, given the fact that several investor-owned utilities have already commenced divestiture proceedings, the Commission believes it is necessary to set an interim policy

regarding the filing of section 3216 plans. Accordingly, an investor-owned utility must file a plan meeting the requirements of section 3216 at the time it petitions the Commission for approval of the sale of its assets. The Commission then anticipates providing parties and interested persons in the proceeding with an opportunity to comment on the plan's compliance with section 3216.

In addition, the statute requires that a utility file a notice with the Commission regarding any closure, relocation, reorganization, or other action that will result in layoffs while the utility's plan is in effect. 35-A M.R.S.A. § 3216(3). However, no specific time requirement for filing the notice is provided. The Commission believes that such notices should be filed 60 days prior to the event.

Finally, there is no provision in the statute for Commission review of a complaint by individual employees who believe they have been wrongfully denied transition benefits. The Commission believes that such issues are not within its area of expertise and are better handled in labor-related dispute resolution forums. The Commission seeks comment on this issue and specifically on the question of whether the Commission must provide a dispute resolution forum.

1. Should the Commission require a utility to file its plan when it files for Commission approval of the sale of its assets?

2. Should the Commission be involved in disputes regarding the eligibility of individual employees? If so, should a specific mechanism/procedure be included in the Rule to allow individual employees to petition the Commission? Or should the matters be handled on an *ad hoc* basis?

3. If a mechanism/procedure should be included in the rules, what should be the specific provisions of that mechanism? How would it work?

4. Should the Commission require a utility to file notice within 60 days of any closure, relocation, reorganization, or other action that will result in layoffs during the term of its employee benefits plan?

E. Cost Recovery

Section 3216(5) allows the Commission to allocate the "reasonable accrual incremental cost of the services and benefits" of this program to ratepayers through charges collected

by the transmission and distribution utility. It does not define what "reasonable accrual incremental cost" means. The Commission seeks comment on how this term should be defined. "Incremental costs" could mean the costs associated with the establishment, annual operation, and annual service fee of the program or it could mean the incremental costs of the program over-and-above currently provided benefit costs (which are included in current rates). However, the term "accrual" could also refer to either month or year-end "accrual" accounting or the establishment of a regulatory asset that will be amortized into rates at a future date.

Section 3216(5) also does not indicate when the program costs should go into rates and, if the costs accrued and costs recovered occur simultaneously, whether the costs in rates should reflect a combination of forecasted and actual program costs. Finally, Section 3216(5) is silent on how the system benefits administrator must account for the revenues collected. The Commission seeks comment on these issues.

1. What does section 3216(5) mean by "reasonable accrual incremental cost"?

2. When will the program's costs go into rates? As soon as there are program costs, or after electric restructuring is implemented on March 1, 2000?

3. What will rates reflect? The amortization of accrued program costs, a forecast of the program's costs, or both?

4. If the rates reflect forecasted costs, how will they be accounted for? Will there be a reconciliation of costs?

5. If the rates reflect the recovery of both accrued and forecasted costs, how will they be accounted for?

6. How will the "system benefits administrator" account for the collection and distribution of revenues?

## IV. CONCLUSION

**We invite interested persons to file written comments on the questions posed in this Notice by December 15, 1997**. As mentioned above, we will commence a formal rulemaking after we receive comments on this inquiry.

Accordingly, we

O R D E R

1. That an inquiry shall be opened as described in the body of this Notice;

2. Until the Commission promulgates a final Rule, an investor owned utility must file a plan that meets the requirements of section 3216 at the time it petitions the Commission for approval of the sale of its generation assets;

3. That this Notice shall be sent to all electric utilities in the state of Maine as well as the labor unions/collective bargaining agents representing their employees and that the utilities and/or labor unions make every effort to post this Notice on an employee information bulletin board (or its functional equivalent);

4. That this Notice shall be sent to the service list of Docket No. 92-345; and

5. That this Notice of Inquiry will also be posted on the Commission's website, http://www/state.me.us/mpuc.

Dated at Augusta, this 20th day of November, 1997.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.